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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,832	12/12/2003	Corazon D. N. Bryce	MBT-124-A	1944

7590

08/23/2005

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EXAMINER

CRANSON JR, JAMES W

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b> 10/734,832	<b>Applicant(s)</b> BRYCE, CORAZON D. N.	
	<b>Examiner</b> James W. Cranson	<b>Art Unit</b> 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 3-7, 9 and 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 2 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/17/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of the Species of Group I, claims 1,2,8,10,11 and 12 in the reply filed on 7/14/2005 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 610,194 to W Neil in view of USPN 1,698,043 to Wise and in further view of US 2004/0086815 A1 to Hermanson or Des 388,522 to Pietrantoni.

W Neil discloses a candleholder with base, wall, top and a plurality of openings but does not have means for changing direction of airflow to help prevent the candle from extinguishing or does Neil have an opening located at a height corresponding approximately to candle height.

Wise teaches in an illumination device means that admit air to a flame and tend to prevent flame from being blown out. Pietrantoni in a design patent for a candleholder and Hermanson in a decorative candleholder both teach openings being located at a height corresponding approximately to candle height.

It would have been obvious to one of ordinary skill in the art at the time of invention to provide Neil with airflow means that change the direction of airflow to help prevent the candle from extinguishing as taught by Wise. The purpose as taught by Wise "is to provide additional security against the flame being blown out and also to render the flame steadier." It would have been further obvious to one of ordinary skill in the art at the time of invention to Neil as modified above by Wise with an opening located at a height corresponding approximately to candle height as taught by both Pietrantoni and Hermanson. The reasons as taught by Hermanson are to provide new functional and aesthetically pleasing characteristics to known candle structures.

Regarding claim 1:

A candleholder (figures 1-3) comprising:

a base unit (n) holding candle (p) providing horizontal support (n4) and upstanding wall (g) extending upwardly from said support surface and separate cover member (m) placed over candle (p) and for mounting on base during use of candleholder, cover member forming a top and having peripherally extending wall section (g') that extends downwardly from top

candleholder formed by combination of base unit and cover member having opening (n4,o2) located between support surface and top (lines 23-26), opening formed by partially cutting and bending small section off wall (Neil discloses cutting and pressing lines 97-102).

Wherein, during use of candleholder, wall portion engages wall section to hold cover member on base (lines 75-82).

Regarding claim 8, according to modified claim 1:

Neil discloses and illustrates in figure 2 that base unit has an outwardly projecting rim extending around the exterior of wall.

Regarding claim 10, according to modified claim 1:

Neil discloses and illustrates in figures 1, 2, 3 and 4 openings that are substantially crescent shaped, each small section being cut along a single arcuate line through  $>90$  degrees  $<180$  degrees as measured from centrepoint to form each opening.

Regarding claim 11, according to modified claim 1:

Modified Neil discloses and illustrates the claimed invention except for opening arranged in one or more horizontally extending rows. It would have been obvious to one of ordinary skill in the art at the time of invention to provide modified Neil with opening arranged in one or more horizontally extending rows because it has been held that lacking any criticality, to shift location of prior art parts does not make the claimed invention patentable over that prior art (*In re Japikse*, 86 USPQ 70).

#### ***Allowable Subject Matter***

Claims 2 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

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Claim 2, according to claim 1, adds that base unit is a tray having a bottom surface, wall portion is relatively short in height compared to said cover member, and opening are formed in peripherally extending wall section.

The claim 2 limitations combined with claim 1 limitations are not found or taught in the art of record.

Claim 12, according to claim 8, adds that rim is formed with holes used during use of candleholder to secure candleholder to the ground by means of U-shaped wire anchors that extend through said holes, candleholder includes several of U-shaped wire anchors, wire anchors have parallel prongs, prongs can be inserted through holes to secure candle holder to ground.

The claim 12 limitations are not found or taught in the art of record.

### ***Conclusion***

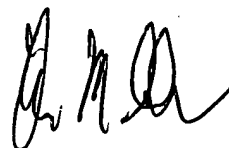
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Cranson whose telephone number is 571-272-2368. The examiner can normally be reached on Mon-Fri 8:30A.M.- 5:00P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandy O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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THOMAS M. SEMBER  
PRIMARY EXAMINER